



3. At all times relevant to this Complaint, Defendant New Century Publishing, LLC (hereinafter "NCP"), was a for-profit domestic limited liability company created on January 11, 2005 and engaged in the solicitation and/or sale of book publishing and promotional services to consumers from its principal place of business located in Marion County, at 1040 East 86<sup>th</sup> Street, Suite 42A, Indianapolis, Indiana 46240.

4. At all times relevant to this Complaint, Caswell was the President, controlling principal and sole owner of NCP, and was active in its management and operations. As controlling principal and owner, Caswell controlled and directed the affairs of NCP, including advertising, contracting and sales practices, and has used the entity for the purpose of misleading and deceiving Indiana consumers as set forth herein.

5. When, in this Complaint, reference is made to any act of Caswell and/or NCP (hereinafter collectively referred to as "Defendants"), such allegations shall be deemed to mean that the principals, agents, representatives, or employees of Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendants and while acting within the scope of their duties, employment, or agency.

6. At times relevant to his Complaint, Defendants operated a website as a means to solicit and sell publication and/or promotional services.

7. Defendants' publication services, its primary operation, included the process of taking raw manuscripts from consumers and providing editing and formatting, galleys, proofs, cover art, and otherwise preparing a file from which a printer could produce hard copies of books.

8. Defendants also offered limited promotional services to consumers, including catalogs, newsletters, press releases, book reviews and synopses, websites, and book signing events.

9. Defendants' business plan appears to be primarily based on a sharing of costs incurred in publishing a book for a consumer, wherein typically the consumer and Defendants each incur approximately fifty percent of the total cost. A consumer would pay separately for copies of the book, and Defendants would receive a small fee for processing those orders. In exchange for Defendants' discounted publication services, Defendant would take a property interest in the book, typically a share of any royalties generated through sales made by Defendants. Such sales would typically occur via Defendants' website. Like many small publishers, Defendants typically utilize subcontractors to provide editing, layout, artwork, and actual printing of books.

10. On information and belief, Defendants purposely interchanged and substituted their corporate, legal, assumed, and fictitious names when soliciting and transacting with consumers, including those identified below, so as to confuse the consumers regarding the actual entity with which they were dealing.

11. Caswell has ignored, controlled, and manipulated the corporate and other legal forms of his company in an attempt to mislead and deceive consumers.

12. Upon information and belief and at all times relevant to this Complaint, Defendants were undercapitalized and Caswell commingled NCP's funds with his own, directed consumer funds to purposes other than those for which they were specifically paid, and otherwise conducted his personal and NCP's business as one.

13. Pursuant to Ind. Code § 23-18-3-3, a member, manager, an agent, or an employee of a limited liability company may become personally liable for the person's own acts or conduct.

14. Piercing the corporate, LLC or other legal form to hold Caswell personally responsible for the actions of NCP is necessary to prevent misuse of the corporate form and to prevent injustice to consumers.

### **Consumer Allegations**

#### **A. Allegations Related to Consumer Timothy Baldwin's Transaction.**

15. On or about August 1, 2009, Defendants represented that they would perform publishing and promotional services for Timothy Baldwin ("Baldwin") of Fishers, Indiana in connection with his manuscript entitled "Aggravating Circumstances" in exchange for his payment of approximately one thousand seven hundred and fifty dollars (\$1,750.00) to Defendants, which Baldwin paid.

16. Among other things, Defendants represented that: (1) once the book was completed and sales by Defendants began, Baldwin would be entitled to royalty payments amounting to fifty percent (50%) of net sales, and that said royalties would be paid to him within six weeks from receipt of the sales proceeds by Defendants; and (2) various promotional services would be performed when Baldwin's book was published, including a press release and inclusion in a newsletter and catalog.

17. Despite sales of Baldwin's book on Defendants' website, royalties were not made in the amount or within the timeframes as represented by Defendants nor were all the promotional services performed as promised.

18. On or about September 2009, Defendants, and specifically Caswell, represented that: (1) in exchange for a payment of four hundred and fifty dollars (\$450.00) by Baldwin, Defendants would design and host a promotional website featuring Baldwin and his book, to coincide with the book's release in late December 2009; and (2) in exchange for a payment of fifty dollars (\$50.00), Defendants further represented that they would provide Baldwin with a table at a book signing event scheduled for January 31, 2010.

19. Despite these representations and Baldwin's payment, Defendants failed to design or host the website or, given the failure to host a book signing, provide Baldwin with a table. Subsequently, and well into May 2010, Defendants, and specifically Caswell, made ongoing promises to refund the amounts owed, but failed to do so.

20. On or about January 6, 2010, Baldwin paid Defendants approximately two hundred ninety dollars and seventy-five cents (\$290.75) for twenty-five (25) copies of his book.

21. Defendants represented that the copies would be delivered or about January 22, 2010. Despite Baldwin's payment, Defendants failed to provide the copies by the date represented and over the following weeks Defendants made various promises to deliver but failed to do so.

**B. Allegations Related to Consumer Tracy Martin's Transaction.**

22. On or about June 26, 2009, Defendants represented that they would perform publishing and promotional services for Tracy Martin ("Martin") of Indianapolis, Indiana in connection with her manuscript entitled "Skin Deep" in exchange

for her payment of approximately one thousand five hundred dollars (\$1,500.00) to Defendants, which Martin paid.

23. Among other things, Defendants represented that various promotional services would be performed when Martin's book was published, including inclusion in a newsletter and catalog.

24. Upon information and belief, Defendants failed to provide Martin with the promotional services upon publication of her book.

25. On or about January 6, 2010, Martin paid Defendants, specifically Caswell, approximately two thousand fifty dollars (\$2,050.00) for five hundred (500) copies of her book.

26. Defendants represented that the copies would be delivered or about February 5, 2010. Despite Baldwin's payment, Defendants failed to provide the copies by the date represented and over the following weeks Defendants, including Caswell, made various promises to deliver but failed to do so.

27. After Defendants provided yet another excuse in early March 2010, Martin had a call placed to the printer only to learn that her book, along with several other books, had not been printed due to Defendants' failure to pay the printer its costs.

28. Upon information and belief, Defendants misappropriated the funds Martin, and possibly others, specifically paid to have copies of her book printed.

**C. Allegations Related to Consumer Dixie Richardson's Transaction.**

29. On or about April 24, 2009, Defendants represented that they would perform publishing and promotional services for Dixie Richardson ("Richardson") of Indianapolis, Indiana in connection with her manuscript entitled "Baynard Rush Hall: His

Story” in exchange for her payment of approximately one thousand five hundred dollars (\$1,500.00) to Defendants, which Richardson paid.

30. Pursuant to the agreement, Richardson was to separately pay for at least forty (40) copies of her book and in connection therewith was told by Defendants that if the copies were paid upfront her books would be completed sooner than if she did not the printing costs upfront.

31. On or about September 17, 2009, Richardson paid Defendants fifty dollars (\$50.00) after Defendants represented that they would provide her with a table at a book signing event scheduled for January 31, 2010.

32. To date, Defendants have failed to host the book signing event and have failed to refund Richardson’s fifty dollar (\$50.00) payment.

33. On or about October 2009, Defendants, and specifically Caswell, personally met with Richardson and others and represented that her books would be ready for delivery by late December 2009.

34. Despite Defendants’ representations, Richardson’s book was not ready for delivery by December 2009.

35. On or about December 18, 2009, Richardson paid Defendants One thousand five hundred twenty dollars (\$1,520.00) for one hundred (100) copies of her book.

36. In the months that followed, Defendants made representations to Richardson as when she could expect delivery of the copies.

37. Despite these representations, copies of her book were never delivered.

38. Furthermore, Defendants, and specifically Caswell, have made representations that Richardson would be refunded the amounts paid for the book signing and copies yet to date have failed to make any refund.

**D. Allegations Related to Consumer Walter Pyatt's Transaction.**

39. On or about September 2009, Walter Pyatt ("Pyatt") of Glenrock, Wyoming, entered into a contract with Defendants to publish his book entitled "April Fools Day in Vroostock" at a cost of one thousand four hundred twenty-six dollars (\$1,426.00) and further agreed to pay Defendants five hundred dollars (\$500.00) to create and host a website featuring Pyatt's book. Pyatt paid Defendants for the website services on that date.

40. Defendants represented the website would be ready in time for the release of the book in January 2010.

41. Despite Pyatt's payment and Defendants' representations, the website was never created.

42. On or about April 14, 2010, Defendants represented that the book was ready to print and that copies could be delivered within a month.

43. On that date, Pyatt paid Defendants one thousand four hundred twenty six dollars (\$1,426.00) for printing costs.

44. On May 15, 2010 Pyatt learned that one of Defendants' subcontractors had not released the finalized and print-ready file on Pyatt's book to Defendants.

45. Defendants misled Pyatt into paying for copies of his book when they did not even possess the print-ready file.

46. To date no copies of Pyatt's book have been delivered to him.



47. Despite Defendants' promises and representations to refund Pyatt for the website they failed to create and the copies they failed to deliver, no refund has been made.

**E. Allegations Related to Consumer Jennifer Spisla's Transaction.**

48. On or about September 2009, Defendants represented that they would perform publishing and promotional services for Jennifer Spisla of Santa Fe, New Mexico ("Spisla") in connection with a book of poetry in exchange for her payment of approximately one thousand five hundred dollars (\$1,500.00) to Defendants, which Spisla paid.

49. Between September 2009 and late June 2010, Spisla made numerous calls to Defendants regarding the lack of progress on her book and why various edits Defendants promised were not done.

50. On June 25, 2010, Defendants specifically told Spisla she deserved a full refund.

51. To date, Defendants have failed to provide a refund or perform the publishing services Spisla paid for.

**F. Allegations Related to Consumer Steven Liebl's Transaction.**

52. On or about June 12, 2009, Defendants represented that they would perform publishing and promotional services for Steven Liebl ("Liebl") of Sun Prairie, Wisconsin in connection with his manuscript in exchange for his payment of approximately one thousand seven hundred and fifty dollars (\$1,750.00) to Defendants, which Liebl paid.

53. On or about December 2009, Liebl paid Defendants an additional seven hundred and forty dollars (\$740.00) for copies of his book which Defendants were to deliver in two (2) weeks.

54. To date, Defendants have failed to: (1) deliver copies of Liebl's book to him; and (2) provide all the publishing and promotional services promised to Liebl.

**G. Allegations Related to Consumer Carla Jackson's Transaction.**

55. On or about July 2009, Defendants represented that they would perform publishing and promotional services for Carla Jackson ("Jackson") of Fayetteville, North Carolina in connection with her manuscript entitled "Furly the Three Toed Lovebird" in exchange for her payment of approximately one thousand five hundred dollars (\$1,500.00) to Defendants, which she paid

56. Subsequently, Jackson paid Defendants an additional seven hundred and forty dollars (\$740.00) for copies of her book.

57. To date, Defendants have failed to deliver copies of Jackson's book to her and provide all the publishing and promotional services promised to Jackson.

**H. Allegations Related to Consumer Robert Henning's Transaction.**

58. On or about December 1, 2009, Robert Henning ("Henning") of Indianapolis, Indiana paid Defendants: (1) one thousand three hundred ninety three dollars and seventy-five cents (\$1,393.75) for one hundred and twenty five (125) copies of a book Defendants had published for him to be delivered by late December 2009; and

(2) fifty dollars (\$50.00) for a table at a book signing event scheduled for January 31, 2010.

59. Despite Defendants' representations regarding the delivery date of Henning's copies and multiple promises to Henning over the following months that his books would be delivered quickly, no books were delivered until March 6, 2010, when only sixty-five (65) books were delivered.

60. Additionally, Defendants have failed to arrange the promised book signing event.

**I. Allegations Related to Consumer Cheri Moser-Coomer's Transaction.**

61. On or about April 1, 2009, Defendants represented that they would perform publishing and promotional services for Cheri Moser-Coomer ("Coomer") of Huntingburg, Indiana in connection with her manuscript entitled "Salmon, Prince of Israel" in exchange for her payment of approximately two thousand dollars (\$2,000.00) to Defendants, which Coomer paid.

62. Pursuant to the agreement, Coomer agreed to purchase at least forty (40) copies of her book.

63. Defendants represented that Coomer's book would be ready to print by August 2010; however, the book was not ready to print by that date. In September 2009, Defendants, specifically including Caswell, represented and verbally "guaranteed" to Coomer that her book would be ready for Christmas 2009 sales.

64. Also in September 2009 Defendants, specifically including Caswell, represented that they would create and host a website featuring Coomer's book to

coincide with its release as well as provide a table at a book signing event to be organized by Defendants and scheduled for January 30, 2010.

65. Coomer paid Defendants an additional five hundred dollars (\$500) for the website and fifty dollars (\$50.00) for the table at the book signing.

66. On or about November 6, 2009, Coomer paid Defendants an additional six hundred seventy-three dollars (\$673.00) for one hundred copies of her book.

67. To date, and despite Coomer's payments and ongoing representations by Defendants, Coomer's book has not been published, no copies have been delivered to her, her website has not been created, and the book signing event has not taken place.

**J. Allegations Related to Consumer Ali Mahjoub's Transaction.**

68. Mahjoub ("Mahjoub") of Fishers, Indiana made the following payments for services to be performed by Defendants: (1) on September 16, 2009, fifty dollars (\$50.00) for a table at a book signing event to be held January 30, 2010; (2) on September 23, 2009, approximately five hundred dollars (\$500.00) to create and host a website featuring Mahjoub's book; and (3) on May 10, 2010, two thousand three hundred fifty seven dollars (\$2,357.00) for three hundred (300) copies of his book.

69. Upon information and belief, Defendants, and specifically Caswell, knew they were in serious financial trouble at the time they accepted Mahjoub's payment for copies on May 10, 2010, and given their failure to get the books published raises concerns that the money was knowingly misappropriated.

70. To date, and despite Mahjoub's payments and ongoing representations by Defendants, no copies have been delivered to him, his website has not been created, and the book signing event has not taken place.

**K. Allegations Related to Consumer John Fosnaught's Transaction.**

71. On or about July 20, 2009, Defendants represented that they would perform publishing and promotional services for consumer John Fosnaught ("Fosnaught") in connection with his manuscript entitled "Run and Gun" in exchange for payment of one thousand seven hundred and fifty dollars (\$1,750.00) to Defendants, which Fosnaught paid.

72. Defendants represented the book would be ready for release by mid-October 2009, at which time certain promotional services would be provided by Defendants.

73. Pursuant to that representation, among others, Fosnaught paid Defendants three thousand seven hundred dollars (\$3,700.00) for three hundred (300) copies of his book.

74. On or about September 22, 2009, Fosnaught paid Defendants an additional fifty dollars (\$50.00) for a table at a book signing event scheduled for January 31, 2010.

75. Despite Fosnaught's payments and ongoing representations by Defendants, his book was not released, no copies were delivered to him, and the book signing event did not take place.

76. Subsequently and upon promises made by Defendants, and specifically Caswell, that problems which had impeded the publication and printing process had been resolved, on or about April 24, 2010 Plaintiff made an additional payment to Defendants in the amount of one thousand four hundred twenty-one dollars (\$1,421.00).

77. To date, Defendants have failed to deliver copies of Fosnaught's book to him.

78. Upon information and belief, Defendants, and specifically Caswell, knew they were in serious financial trouble at the time they accepted Fosnaught's payment for copies on April 24, 2010, and given their failure to get the copies made raises concerns that the money was knowingly misappropriated.

**L. Allegations Related to Consumer Sarah Cowgill's Transaction.**

79. On or about October 9, 2009, Defendants represented that they would perform publishing and promotional services for consumer Sarah Cowgill ("Cowgill") in connection with her manuscript in exchange for payment of one thousand five hundred dollars (\$1,500.00) to Defendants, which Cowgill paid.

80. To date, Defendants have failed to perform the publishing and promotional services as represented.

**M. Allegations Related to Consumer Larry Zickmund's Transaction.**

81. On or about February 1, 2010, Defendants represented that they would perform publishing and promotional services for consumer Larry Zickmund ("Zickmund") in connection with his manuscript entitled "Hector the Magnificent" in exchange for payment of one thousand seven hundred and fifty dollars (\$1,750.00) to Defendants, which Zickmund paid.

82. Defendants represented that the book would be ready by Summer 2010.

83. On or about July 6, 2010, Defendants told Zickmund that if his book was not ready by the beginning of August 2010, they would refund him.

84. To date, Zickmund's book is not available and Defendants have failed to refund him.

**N. Allegations Related to Consumer Michael Willever's Transaction.**

85. On or about November 12, 2009, consumer Michael Willever (“Willever”) paid Defendants five hundred thirteen dollars and eighty cents (\$513.80) for forty (40) copies of his book entitled “A Dark and Bloody Ground: Sowing the Wind”.

86. Willever also paid Defendants fifty dollars (\$50.00) for a table at a book signing event scheduled for January 31, 2010.

87. Despite Willever’s payments and ongoing representations by Defendants to the contrary, the copies were not delivered to him and the book signing event did not take place.

**O. Allegations Related to Consumer Fred Cavender’s Transaction.**

88. On or about March 27, 2009, Defendants represented that they would perform publishing and promotional services for consumer Fred Cavender (“Cavender”) in connection with his manuscript entitled “The Hoosier Book of Humor” in exchange for payment of one thousand two hundred and fifty dollars (\$1,250.00) to Defendants, which Cavender paid.

89. On or about August 16, 2009, Defendants represented that they would perform publishing and promotional services in connection with Cavender’s manuscript entitled “Toilets, Tubs, and Tomfoolery” in exchange for payment of one thousand two hundred and fifty dollars (\$1,250.00) to Defendants, which Cavender paid.

90. Cavender paid Defendants four hundred and forty dollars (\$440.00) for copies of his books and an additional fifty dollars (\$50.00) for a table at a book signing event scheduled for January 31, 2010.

91. To date, and despite Cavender’s payments and ongoing representations by Defendants that they would honor their obligations, Cavender’s books have not been

completed, no copies have been delivered to him, and the book signing event has not taken place.

**P. Allegations Related to Consumer Alfredo Gonzalez's Transaction.**

92. On or about May 19, 2009, Defendants represented that they would perform publishing and promotional services for consumer Alfredo Gonzalez's ("Gonzalez") in connection with his manuscript in exchange for payment of one thousand two hundred and fifty dollars (\$1,250.00) to Defendants, which Gonzalez paid.

93. Defendants represented that the book would be ready by Christmas 2009.

94. On or about December 2009, Gonzalez paid Defendants fifty dollars (\$50.00) for a table at a book signing event scheduled for January 31, 2010.

95. To date, and despite Gonzalez's payments and ongoing representations by Defendants that they would honor their obligations, Gonzalez's books have not been completed and the book signing event has not taken place.

**COUNT I- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

96. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 95 above.

97. The transactions referred to above are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

98. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

99. The Defendants' representations to consumers that the consumers would be able to purchase items, including copies of books, publishing or promotional services, including but not limited to websites and/or book signings, when the Defendants knew or



reasonably should have known the consumers would not receive the items and services as represented, as referenced above, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

100. The Defendants' representations to consumers that the Defendants would deliver copies of books, publishing or promotional services, including but not limited to websites and/or book signings, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced above, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

101. The Defendants' representations to the consumers they would be able to purchase items, including copies of books, publishing or promotional services, including but not limited to websites and/or book signings as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced above, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II-KNOWING AND INTENTIONAL VIOLATIONS OF THE  
DECEPTIVE CONSUMER SALES ACT**

102. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 101 above.

103. The misrepresentations and deceptive acts set forth above, were committed by the Defendants with knowledge and intent to deceive.

### **RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or should reasonably know it does not have;
- b. representing expressly or by implication the Defendants are able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they can not; and
- c. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, for the following relief:

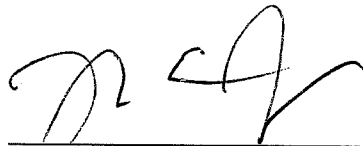
- (a). cancellation of the Defendants' unlawful agreements with consumers, pursuant to Ind. Code § 24-5-0.5-4(d);
- (b). consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers, in an amount to be determined at trial;

- (c). costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- (d). on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- (e). on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- (f). all other just and proper relief.

Respectfully Submitted,

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By:

  
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